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**IN THE MATTER OF  
KEITH BANKS,  
BOARD OF GOVERNORS MEMBER,  
RUTGERS UNIVERSITY**

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**STATE ETHICS COMMISSION**

**Commission Case No. 60-16**

**DECISION**

## **BACKGROUND**

Rutgers, The State University of New Jersey ("Rutgers") requests an exception to Executive Order 14 (Corzine 2006) ("EO 14") on behalf of Board of Governors member Keith Banks ("Banks"). Banks is the President of U.S. Trust, Bank of America Private Wealth Management, which provides integrated investment, trust, banking and lending services to wealthy clients. Banks is also a board member of the Bank of America Charitable Foundation and he sits on the Bank of America's Chief Executive Officer's Management Committee.

EO 14 prohibits a member of a State college or university governing board from being employed by or deriving or receiving any compensation from a firm, association, or partnership that does business with the institution that the board member governs. The term "doing business with" is defined to mean "providing or receiving any goods or services or otherwise engaging in a transaction involving the exchange of anything of value." Pursuant to paragraph 5 of EO 14, however, the State Ethics Commission is authorized to grant exceptions from this prohibition if "in the judgment of the Executive Director, the entity that is doing business with the institution is doing so pursuant to a contract awarded in accordance with the competitive bidding laws applicable to that institution or the public interest requires an exception to be made."

## **APPLICATION**

According to the information provided by Rutgers, Bank of America ("BofA") is one of seven firms in a pool of bond underwriters approved by Rutgers to provide underwriting services for a term of three years. BofA also serves as the co-managing underwriter for Rutgers. The selection of BofA to provide these services to Rutgers was made in August 2014, more than two years before Banks' appointment to the Rutgers Board of Governors in November 2016. The contract was awarded to BofA pursuant to a request for proposal ("RFP") bidding process which complied with Rutgers' applicable competitive bidding requirements, and did not involve Banks. Rutgers has indicated that Banks will recuse himself from any matters involving BofA while serving on the Board of Governors.

While EO 14 expressly prohibits Banks, as a member of the Board of Governors, from receiving any compensation from BofA while Rutgers is doing business with the company, the State Ethics Commission may grant an exception to this prohibition if BofA is doing business with Rutgers pursuant to a contract awarded in accordance with the competitive bidding laws applicable

to Rutgers or if the public interest requires that an exception be made. In this situation, an EO 14 exception is appropriate because BofA was selected to provide underwriting services to Rutgers pursuant to an RFP process which met the competitive bidding requirements applicable to the institution. Moreover, BofA was selected to provide underwriting services for Rutgers more than two years prior to Banks' appointment to the Board of Governors, and he had no involvement in the selection. Under these circumstances, an EO 14 exception also serves the public interest because there is no risk that the selection of BofA was influenced by Banks' position on the Rutgers Board and granting the exception will allow Rutgers to continue to do business with BofA, a company it previously determined to be most suited to provide the underwriting services.

## **DECISION**

The Commission grants Keith Banks an exception to the provisions of EO 14. In his capacity as a member of the Rutgers Board of Governors, however, Mr. Banks must recuse himself from any matters involving Bank of America or U.S. Trust.

DECISION RENDERED BY THE  
STATE ETHICS COMMISSION ON  
THE 6<sup>th</sup> DAY OF DECEMBER, 2016.